

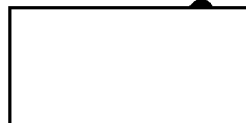
Office of Legislative Counsel

13 FEB 1979

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NOTE FOR: Don Wortma

I thought the attached review
and commentary might be helpful in
connection with your considerations
relating to the implementation of the
financial disclosure requirements of
P.L. 95-521.



Fred Hitz

Att



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DD/A Registry

79-0101/3

OLC 79-0229/2
7 February 1979

MEMORANDUM FOR THE RECORD

SUBJECT: Exemptions from the Public Disclosure Aspects
of the Financial Disclosure Requirements of
the Ethics in Government Act of 1978

AT REFERENCE: [REDACTED] 7 December 1978

DD/A 79-0220

DD/O 79-0399

1. References raise the issue of which Agency positions should be recommended for Presidential determination of exemption from the public disclosure aspects of the financial disclosure requirements of the Ethics in Government Act (P.L. 95-521). The legislative history of the relevant section of the Act justifies a broad interpretation of the President's authority.

2. The House version of the Ethics in Government Act provided that financial reports filed by individuals engaged in intelligence activities would not be made public if the President found that "due to the nature of the office or position occupied by such individual, public disclosure of such report would compromise the national interest of the United States." The bill passed by the Senate contained a much narrower provision that would have provided for protection against public disclosure of financial reports only in cases where "due to the nature of the office or position occupied by such individual, public disclosure of such report would reveal the identity of an undercover agent of the Federal Government."

3. OLC representatives worked to secure support for the House version. At the Senate-House conference (which both OLC and OGC representatives attended) the Senate receded to the House provision with an amendment. Section 205(a) of the Act now provides that financial reports filed by intelligence personnel will not be made public if the President finds that:

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"due to the nature of the Office or position occupied by such individual, public disclosure of such report would, by revealing the identity of the individual or other sensitive information, compromise the national interest of the United States."

The change from the House version consisted of the addition of "by revealing the identity of the individual or other sensitive information."

4. The Conference Report explanation of Section 205(a) notes that the exemption for individuals engaged in intelligence activities "would be used for those individuals who are or may be undercover and whose identity as an intelligence officer must remain confidential (emphasis added). The Conference Report explains that the President will also have the authority to determine that "certain reports shall not be made public under circumstances where disclosure of the report for other reasons would reveal sensitive information about our intelligence agencies which he believes should not be public" (emphasis added).

5. It is certain, therefore, that the Congress intended for the President to be able to exempt from the public disclosure aspects of the financial disclosure requirements: (1) intelligence officers currently under cover; and (2) officers who may in the future be under cover. It is also clear that the Congress meant to give the President authority to exempt additional reports from public disclosure.

6. While Section 6 of the CIA Act of 1949 does not, unfortunately, apply to subsequently enacted legislation, a strong case can be made for the proposition that the counter-intelligence rationale behind that Act's exemption of the Agency from the provisions of any other law requiring disclosure of organization, functions, names, official titles, salaries, or numbers of personnel is particularly applicable to the public disclosure aspects of the financial disclosure requirements of the Ethics in Government Act. The Ethics Act requires that each financial report which is made public be accompanied by "a copy of the official position description of the Government office or position held by the reporting individual involved (if available)." The Act would thus require revelation of organizational structure and identities of incumbents of particular positions, as well as financial data on each incumbent. This combination has ominous potential counterintelligence consequences.

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7. The undersigned believes that the Agency can and should recommend to the President that, with the exception of a limited number of high-level publicly identified officials, he should exercise his authority to determine that public revelation of financial reports filed by CIA officers and accompanying position-related material would reveal sensitive information and compromise the national interest of the United States.



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